



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

December 13, 1995

Mr. Elton Bomer
Commissioner
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

Letter Opinion No. 95-079

Re: Whether Texas Insurance Code article 1.06C restricts a former general counsel of the Texas Department of Insurance from appearing on his or her own behalf before the department (ID# 32902)

Dear Mr. Bomer:

You ask "whether Tex. Const. art. I, § 27 limits the application of Tex. Ins. Code art. 1.06C to a former general counsel appearing on his own behalf before the Texas Department of Insurance (the "department" or "TDI")." You quote subsection (a) of article 1.06C, "the TDI 'revolving door' statute," which provides, in relevant part:

A person serving as . . . general counsel . . . may not, for a period of one year after the date the person ceases to be . . . general counsel . . . represent any person in a matter before the department or receive compensation for services rendered on behalf of any person regarding a matter pending before the department.

You say that "[i]t is the position of this agency that a former general counsel is prohibited from representing himself in a matter before the department for one year after he ceases to be general counsel." However, you advise that "it has been argued" that under article I, section 27 of the state constitution—which among other things protects the right of citizens to "apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance"—"a former general counsel cannot be denied the right to appear on his own behalf before the department, notwithstanding the prohibition of Tex. Ins. Code art. 1.06C."

You indicate that your construction of article 1.06C's prohibition as including "representing" oneself before the department is based on Ethics Advisory Opinion No. 44 (1992). That opinion considered the prohibition in the generally applicable "revolving door" statute, now in Government Code section 572.054, making it unlawful for former members of an agency's governing body or its former executive head to make, within two years of their cessation of service, communications or appearances before the agency, "with the intent to influence," "on behalf of any person in connection with any matter on which the person seeks official action." The opinion concluded that the section 572.054 prohibition included "communications or appearances on the former officer's own behalf."

Ethics Advisory Opinion No. 44 (1992) at 2. The opinion acknowledged, however, that "[u]nder the due process requirements of the federal Constitution, a former officer may in some circumstances be entitled to appear before or communicate with his former board." *Id.* at 2 n.1 (citing *Memphis Light, Gas, & Water Div. v. Craft*, 436 U.S. 1 (1978)). Subsequently, in Ethics Advisory Opinion No. 250, the Ethics Commission declined to respond to the question you present here--whether the revolving door provisions in article 1.06C, Insurance Code, similarly restricted representation on one's own behalf--stating that the commission had "no authority to interpret provisions of the Insurance Code." Ethics Advisory Opinion No. 250 (1995) at 2. (Government Code chapter 571, subchapter D directs the Ethics Commission to issue opinions, at the request of affected persons or on its own initiative, on the application of laws in Government Code chapters 302, 305, and 572; title 15, Election Code; and Penal Code chapters 36 and 39).

While we do not think it necessary here to specifically address the scope of the revolving door provision of Government Code section 572.054, as treated in Ethics Advisory Opinion No. 44, it is our opinion, in response to your question, that Insurance Code article 1.06C(a), in restricting by one of the enumerated former officers or employees "represent[ation of] any person in a matter before the department," was not intended to restrict a covered individual's appearing, in fact, on the individual's own behalf before the department.

We believe that the purpose of article 1.06C was to restrict a former officer or employee from taking advantage of connections the former officer or employee might have with the agency in representing or providing other services to other persons or entities who dealt with it. However, where such officer or employee would otherwise be entitled to assert a right or be heard by the agency on his or her own behalf, we do not think that article 1.06C was intended to operate to restrict his or her doing so. Such a construction of the provision would only have the effect of obliging the former officer or employee to obtain representation for himself or herself in such circumstances, a result which we do not see as serving the purposes of the provision, particularly as the agency personnel involved would in any case be aware that it was their former colleague who was the party in interest being represented. Such result would also, we think, place an unreasonable burden on those former officers or employees, who were themselves not in the business of representing or assisting others before the agency, should they themselves have business before it, since they would be obliged to obtain representation to do such business. Finally, whether viewed as derived from due process principles or other corollary ones such as those of article I, section 27 you refer to, the right of an individual to appear on his or her own behalf rather than through counsel cannot, we think, be denied--at least on the basis of any state interests arguably furthered by article 1.06C. *Cf.*, e.g., *Tex. R. Civ. P. 7* (person may appear "in person or by an attorney"); *Ex parte Shaffer*, 649 S.W. 2d 300, 302 (Tex. 1983) ("[O]rdering a person to be represented by an attorney abridges that person's right to be heard by himself.").

Again, we conclude, in response to your question, that Insurance Code article 1.06C, in restricting a former Department of Insurance general counsel from "represent[ing] any person in a matter before the department," does not restrict such former general counsel's appearing on his or her own behalf before the department.¹

S U M M A R Y

Insurance Code article 1.06C, in restricting a former Department of Insurance general counsel from representing "any person" in a matter before the department, does not restrict such former general counsel's appearing on his or her own behalf before the department.

Yours very truly,



William M. Walker
Assistant Attorney General
Opinion Committee

¹As you do not present facts as to the activities of the former general counsel you are concerned about, we do not speculate here what kinds of activities should be considered as appearing "on his own behalf" under our conclusion here. We note specifically, for example, that we do not attempt to determine here at what point acting on behalf of a business entity with which one is associated—such as a sole proprietorship, partnership, or corporation—should be deemed to be representation of others than just oneself, and thus within the article 1.06C prohibition.